

EXHIBIT D

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No. 3:07-cv-05944-SC
MDL No. 1917

The Honorable Samuel Conti

This Document Relates to:

ALL DIRECT ACTION COMPLAINTS
AND DOCUMENTS

**DIRECT ACTION PLAINTIFFS' REPLY TO
DEFENDANT CHUNGHWA PICTURE
TUBES LTD.'S OPPOSITION TO MOTION
TO SERVE DEFENDANTS CHUNGHWA
PICTURE TUBES LTD., BEIJING
MATSUSHITA COLOR CRT CO., LTD., AND
LG ELECTRONICS TAIWAN TAIPEI CO.
THROUGH THEIR U.S. COUNSEL
PURSUANT TO FED. R. CIV. P. 4(f)(3)**

1 *Electrograph systems, Inc., et al., v.*
2 *Hitachi, Ltd., et al., Case No.*
3 *11-CV-01656-SC*

4 *Interbond Corporation of America, v.*
5 *Hitachi, Ltd., et al, Case No. 11-CV-06275-*
6 *SC*

7 *Office Depot, Inc., v. Hitachi, Ltd., et al.,*
8 *Case No. 11-CV-06276-SC*

9 *Costco Wholesale Corporation, v. Hitachi,*
10 *Ltd., et al., Case No. 11-CV-06397-SC*

11 *Compucom Systems, Inc., v. Hitachi, Ltd.,*
12 *et al., Case No. 11-CV-06396-SC*

13 *Alfred H. Siegel, as Trustee of the Circuit*
14 *City Stores, Inc. Liquidating Trust, v.*
15 *Hitachi, Ltd. et al., Case No. 11-CV-05502-*
16 *SC*

17 *Target Corp. et al., v. Chunghwa Pictures*
18 *Tubes, Ltd., et al., Case No. 11-CV-05514*
19 *(EDL)*

20 *John R. Stoebner, as Chapter 7 Trustee for*
21 *PBE Consumer Electronics, LLC, et al., v.*
22 *LG Electronics, Inc., et al., Case No. CV-*
23 *11-05381-SC*

24 *P.C. Richard & Son Long Island*
25 *Corporation, et al., v. Hitachi, Ltd., et al.,*
26 *Case No. 11-CV-05530 (JBW, VVP)*

27 *Schultze Agency Services, LLC, et al., v.*
28 *Hitachi, Ltd., et al., Case No. 11-CV-05529*

Target Corp., et al., v. Hitachi, Ltd., et al.,
Case No. 11-CV-05515

Best Buy Co., Inc., et al., v. Hitachi, Ltd., et
al., Case No. 11-CV-05513-SC

Hearing Date: May 21, 2012

Time: 10:00 a.m.

JAMS: Two Embarcadero Center, Suite 1500

Special Master: Hon. Charles A. Legge

Direct Action Plaintiffs that are signatories to this motion (the “DAPs”) hereby file their Reply Brief in Further Support of their Motion for an Order permitting the DAPs to serve Chunghwa Picture Tubes Ltd. (“Chunghwa”) and Beijing Matsushita Color CRT Co., Ltd. (“BMCC”) (collectively, the “Foreign Defendants”) via U.S. Mail through their respective U.S. counsel pursuant to Federal Rule of Civil Procedure 4(f)(3).¹

I. INTRODUCTION

This is the twentieth time in the last two years that Chunghwa has opposed a motion to serve it through its U.S. counsel under Federal Rule of Civil Procedure 4(f)(3) (“Rule 4 Motion”). In each of the prior nineteen occasions, courts have rejected the same arguments that Chunghwa raises here. *See* Docket No. 1147, #1 at ¶ 7); LCD Litigation at Docket Nos. 1657, 1779, 2109, 2532, 2539, 2584, 2747, 2748, 2825, 3079, 3217, 3345, 3394, 3443, 3654, 3655, 4785, 4797 & 4798. As explained in the DAPs’ Rule 4 Motion and again below, the same result is warranted here. *Cf. In re CRT Antitrust Litig.*, Case 3:07-cv-05944-SC, Docket No. 665, at 8-9 (“For the most part, Defendants’ objections re-hash arguments that have been considered and rejected by courts in this district.”). Notably, BMCC has not even filed an opposition to the Rule 4 Motion and instead had its U.S. counsel send a letter to the Court raising irrelevant and factually unsupported arguments that it too should not be served through that same U.S. counsel. For the reasons below, the Court should grant the DAPs’ Rule 4 Motion in all respects.

II. ARGUMENT

A. Rule 4(f)(3) Does Not Require Proof of Urgency, Nor An Evasive Defendant, Nor Attempts Via Letters Rogatory

Chunghwa creates a false standard for invocation of Rule 4(f)(3). Under Chunghwa’s interpretation, before a plaintiff can invoke Rule 4(f)(3), it must establish that the circumstances of the action constitute an “emergency” or rise to a certain level of “urgency,” show that a

¹ Pursuant to the Stipulation entered into between the DAPs and LG Electronics Taiwan Taipei (“LGETT”) on April 27, 2012 (Docket No. 1169) and the DAPs’ April 26, 2012 Notice of Withdrawal (Docket No. 1164), LGETT is no longer a party to this motion.

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2 defendant actively evaded a plaintiff's attempts at service, or demonstrate that the plaintiff first
3 attempted service via letters rogatory. The controlling authority in this Circuit shows that this is
4 simply not the case. Thus, Chunghwa's argument should be rejected.

5 Chunghwa's assertion that a plaintiff must demonstrate "urgency" is based on a skewed
6 reading of *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007 (9th Cir. 2002).
7 Chunghwa ignores the portion of the case where the Ninth Circuit established that a district court
8 has wide discretion to permit service under Rule 4(f)(3) for a variety of reasons. *Rio Props.*, 284
9 F.3d at 1015-16. *Rio Properties* held that that "Rule 4(f)(3) is an equal means of effecting service
10 of process under the Federal Rules of Civil Procedure...commit[ed] to the sound discretion of the
11 district court [to] determin[e] when the particularities and necessities of a given case require
12 alternate service of process under Rule 4(f)(3)." *Id.* (acknowledging the wide variety of service
13 methods permitted by different courts to accommodate different situations including "delivery to
14 the defendant's attorney.").²

15 Similarly, Chunghwa cites cases involving defendants that evaded service of process and
16 erroneously reasons that a defendant must engage in evasive behavior before a plaintiff can
17 invoke Rule 4(f)(3). But Chunghwa can point to no authority stating that evasion is a requirement
18 under Rule 4(f)(3). In fact, in the LCD Litigation, Judge Illston has repeatedly ordered service on
19 Chunghwa's U.S. attorneys where there was no "evasion of service." *See* Docket No. 1147, #1 at
20 ¶ 7; LCD Litigation Docket Nos. 1657, 1779, 2109, 2532, 2539, 2584, 2747, 2748, 2825, 3079,
21 3217, 3345, 3394, 3443, 3654, 3655, 4785, 4797 & 4798. As binding authority in this Circuit
22 clearly states, a plaintiff is only required to demonstrate that "the facts and circumstances of its
23 case necessitate[] the district court's intervention," not that an "emergency" exists or that
24 defendant engaged in evasive behavior. *See Rio Props.*, 284 F.3d at 1015-16.

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27 ² Nor is Chunghwa's citation to the Advisory Committee Notes to Rule 4(f)(3) persuasive. The
28 portion of the Notes Chunghwa relies upon involves a hypothetical concerning the Hague
Convention, an international agreement to which Taiwan is not a signatory, and which thus has no
application here. *See* Opposition at 3, n.1.

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2 Nor does Rule 4(f)(3) indicate that it is available only after attempting service of process
3 by other means. In the words of the Ninth Circuit:

4 [C]ertainly Rule 4(f)(3) includes no qualifiers or limitations which indicate its
5 availability only after attempting service of process by other means...[and]...
6 service of process under Rule 4(f)(3) is neither a last resort nor extraordinary
7 relief.

8 *Rio Props.*, 284 F.3d at 1015.

9 Moreover, to the extent the DAPs were required to show some level of urgency before
10 invocation of Rule 4(f)(3), they have done so. Because the DAPs' cases have been consolidated
11 with other related cases in an MDL proceeding, they are now part of a coordinated discovery
12 schedule. Until the DAPs are able to serve Chunghwa, they cannot coordinate and participate in
13 discovery against Chunghwa with the other plaintiffs. Given that international service in Taiwan
14 will delay the DAPs' commencement of discovery against Chunghwa for many months, the
15 DAPs would be forced to either delay discovery against Chunghwa for all plaintiffs or seek
16 separate discovery from Chunghwa on a different scheduling track.

17 Chunghwa correctly notes that the DAPs' Motion conflates the costs of the two alternative
18 methods of service on a Taiwanese Defendant. Nevertheless, the quotes provided by Legal
19 Language Services plainly show that the DAPs would have to spend in excess of \$71,000 to serve
20 Chunghwa by Letters Rogatory. Docket No. 1147, #1 at ¶¶ 12-14; Exh. 2³. Alternatively, the
21 DAPs would have to spend \$36,000 – not including translation costs – to serve Chunghwa
22 through an attorney or agent in Taiwan; and this method of service does not appear viable in any
23 event. Chunghwa did not and cannot dispute that either method would be a tremendous, wasteful,
24 and unnecessary cost that should not be born by the DAPs.

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26
27 ³ The Legal Language Services Estimates for service on Taiwanese Defendants were originally
28 calculated based on serving both LGETT and Chunghwa, but because LGETT is no longer a
party to this motion, the DAPs would only have to serve one Defendant in Taiwan. Accordingly,
only 50% of the applicable estimate is used here.

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2 **B. Serving Chunghwa's U.S. Counsel Does Not Violate Due Process**

3 Nor do Chunghwa's due process protestations have any merit. Chunghwa does not and
4 can not dispute that it and its counsel have received more than just mere "notice" of this litigation.
5 Rather, both have been active participants. Indeed, Chunghwa has appeared and participated in
6 this MDL through U.S. counsel, Gibson, Dunn & Crutcher ("Gibson Dunn"). Beginning in
7 October 15, 2010, Gibson Dunn has repeatedly appeared as counsel for Chunghwa and provided
8 declarations, joined in motions to file confidential documents under seal, and most recently,
9 joined in motions for preliminary approval of indirect purchaser class action settlements. *See e.g.*
10 Docket Nos. 891, 942, 943, and 960.

11 **C. BMCC Has Provided No Reason Precluding Service Through Its U.S.**
12 **Counsel**

13 Unlike Chunghwa, BMCC filed no opposition to the DAPs' motion, but instead had its
14 U.S. counsel (and counsel in this very MDL), Freshfields Bruckhaus Deringer LLP
15 ("Freshfields") send a letter with the Court. In this letter, Freshfields confusingly represents that
16 it "has not been instructed to represent BMCC in the direct action cases or in the actions brought
17 by the state attorneys generals [sic]." (Reply Paul Decl. at ¶ 5, Exh. 1.)

18 The Freshfields Letter fails to mention that it has been actively representing BMCC in the
19 MDL since July 17, 2008. *See* Docket No. 332. And since then, Freshfields has appeared
20 numerous times as counsel for BMCC including **accepting service of process**. *See* Docket No.
21 372; *see also* Docket Nos. 400, 463, 479, 485, 546, 551, 555, 614, 618, 667, 677, 678, 780, 813;
22 858, 936, 975, and 1043.

23 Freshfields' remaining contentions regarding the business and current state of BMCC are
24 similarly vacuous. Not only are these issues wholly irrelevant to whether service on counsel is
25 proper, but they are supported through solely an attorney's declaration that professes zero
26 personal knowledge and creates no foundation for the facts it purports to assert. The fact that
27 BMCC is a Chinese company is the precise reason why the DAPs are bringing this motion.
28 Counsel's statement that BMCC sold only tubes and not finished products is of no consequence

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2 to the instant motion. In any event, these assertions are made through Ms. Laciak's declaration –
3 a Freshfields attorney and not a BMCC employee – and therefore lack foundation.

4 **III. CONCLUSION**

5 For these reasons, the Court should grant the DAPs' Rule 4 Motion in all respects.
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7

8 DATED: May 8, 2012

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

9
10 By: /s/ David Martinez
Roman M. Silberfeld
David Martinez

11 Attorneys for Plaintiffs
12 BEST BUY CO., INC.; BEST BUY PURCHASING
13 LLC; BEST BUY ENTERPRISE SERVICES, INC.;
14 BEST BUY STORES, L.P.; BESTBUY.COM, L.L.C.;
and MAGNOLIA HI-FI, INC.

15 DATED: May 8, 2012

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17 William A. Isaacson
18 Jennifer Milici
19 Stuart Singer
Philip J. Iovieno
Anne M. Nardacci

20 LIAISON COUNSEL FOR DIRECT ACTION
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22 ELECTROGRAPH TECHNOLOGIES, CORP.,
OFFICE DEPOT, INC., COMPUCOM SYSTEMS,
23 INC., INTERBOND CORPORATION OF AMERICA,
P.C. RICHARD & SON LONG ISLAND
24 CORPORATION, MARTA COOPERATIVE OF
AMERICA, INC., ABC APPLIANCE, INC.,
25 SCHULTZE AGENCY SERVICES LLC ON BEHALF
OF TWEETER OPCO, LLC, AND TWEETER
26 NEWCO, LLC
27
28

DATED: May 8, 2012

CROWELL MORING LLP

By: /s/ Jason c. Murray
Jason C. Murray
Jerome (Jerry) A. Murphy

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GUYS, INC.; RADIOSHACK CORP.

DATED: May 8, 2012

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INC. AND RELATED ENTITIES, AND AS
RECEIVER FOR PETTERS COMPANY, LLC AND
RELATED ENTITIES

DATED: May 8, 2012

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By: /s/ David J. Burman
David J. Burman
Nick Hesterberg
Euphemia N. Thomopoulos

**ATTORNEYS FOR PLAINTIFF
COSTCO WHOLESALE CORPORATION**

DATED: May 8, 2012

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By: /s/ H. Lee Godfrey

H. Lee Godfrey

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ATTORNEYS FOR PLAINTIFFS

ALFRED H. SIEGEL, AS TRUSTEE OF THE
CIRCUIT CITY STORES, INC. LIQUIDATING
TRUST

Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of
this document has been obtained from the Direct Action Plaintiffs.

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION
19

20 IN RE: CATHODE RAY TUBE (CRT)
21 ANTITRUST LITIGATION

Master File No. 3:07-cv-05944-SC
MDL No. 1917

The Honorable Samuel Conti

22
23 This Document Relates to:

24 ALL DIRECT ACTION COMPLAINTS
AND DOCUMENTS

**DECLARATION OF JORDAN S. PAUL IN
SUPPORT OF DIRECT ACTION
PLAINTIFFS' REPLY TO DEFENDANT
CHUNGHWA PICTURE TUBES LTD.'S
OPPOSITION TO MOTION TO SERVE
DEFENDANTS CHUNGHWA PICTURE
TUBES LTD., BEIJING MATSUSHITA
COLOR CRT CO., LTD., AND LG
ELECTRONICS TAIWAN TAIPEI CO.
THROUGH THEIR U.S. COUNSEL**

Electrograph systems, Inc., et al., v. Hitachi, Ltd., et al., Case No. 11-CV-01656-SC

Interbond Corporation of America, v. Hitachi, Ltd., et al, Case No. 11-CV-06275-SC

Office Depot, Inc., v. Hitachi, Ltd., et al., Case No. 11-CV-06276-SC

Costco Wholesale Corporation, v. Hitachi, Ltd., et al., Case No. 11-CV-06397-SC

Compucom Systems, Inc., v. Hitachi, Ltd., et al., Case No. 11-CV-06396-SC

Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust, v. Hitachi, Ltd. et al., Case No. 11-CV-05502-SC

Target Corp. et al., v. Chunghwa Pictures Tubes, Ltd., et al., Case No. 11-CV-05514 (EDL)

John R. Stoebner, as Chapter 7 Trustee for PBE Consumer Electronics, LLC, et al., v. LG Electronics, Inc., et al., Case No. CV-11-05381-SC

P.C. Richard & Son Long Island Corporation, et al., v. Hitachi, Ltd., et al., Case No. 11-CV-05530 (JBW, VVP)

Schultze Agency Services, LLC, et al., v. Hitachi, Ltd., et al., Case No. 11-CV-05529

Target Corp., et al., v. Hitachi, Ltd., et al., Case No. 11-CV-05515

Best Buy Co., Inc., et al., v. Hitachi, Ltd., et al., Case No. 11-CV-05513-SC

PURSUANT TO FED. R. CIV. P. 4(f)(3)

Hearing Date: May 21, 2012

Time: 10:00 a.m.

JAMS: Two Embarcadero Center, Suite 1500

Special Master: Hon. Charles A. Legge

REPLY DECLARATION OF JORDAN S. PAUL

I, Jordan S. Paul, hereby declare as follows:

1. I am an attorney with the law firm of Robins, Kaplan, Miller & Ciresi L.L.P., which represents Best Buy Co., Inc.; Best Buy Purchasing LLC; Best Buy Enterprise Services, Inc.; Best Buy Stores, L.P.; Bestbuy.com, L.L.C. and Magnolia Hi-Fi, Inc. (collectively, "Best Buy") in the multidistrict litigation *In re Cathode Ray Tube (CRT) Antitrust Litigation*, 3:07-cv-05944-SC (the "MDL"), currently pending in the United States District Court for the Northern District of California.

2. I am a member in good standing of the State Bar of California and admitted to practice before the United States District Court for the Northern District of California.

3. I submit this declaration in accordance with Local Rule 7-5, N.D. Cal., to set forth facts in support of the Direct Action Plaintiffs' Reply To Defendant Chunghwa Picture Tubes Ltd.'s Opposition To Motion To Serve Defendants Chunghwa Picture Tubes Ltd. ("Chunghwa"), LG Electronics Taiwan Taipei Co. ("LGETT"), and Beijing Matsushita Color CRT Co., Ltd. ("BMCC") through their U.S. Counsel Pursuant to Fed. R. Civ. P. 4(f)(3) filed concurrently herewith.

4. The matters stated herein are true to my own personal knowledge, and, if called as a witness, I could and would competently testify thereto.

5. Attached hereto as Exhibit 1 is a true and correct copy of the May 1, 2012 letter from Freshfields Bruckhaus Deringer LLP attorney Christine Laciak to Judge Charles A. Legge and the accompanying Declaration of Christine Laciak.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of May, 2012, in Los Angeles, California.

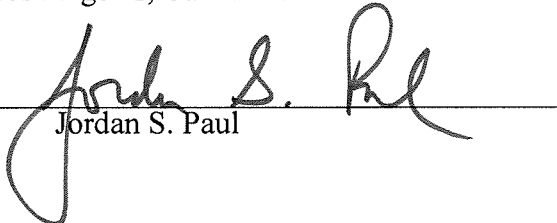

Jordan S. Paul

EXHIBIT 1



Freshfields Bruckhaus Deringer US LLP

Honorable Charles A. Legge
JAMS
Two Embarcadero Center
Suite 1500
San Francisco, CA 9411

Via Email

May 1, 2012

**RE: In re Cathode Ray Tube (CRT) Antitrust Litigation, Case No. 07-5944 SC,
MDL 1917 (N.D. Cal.): Letter to Court re: Direct Action Plaintiffs and State of
Florida Motions to Serve BMCC via U.S. Counsel**

Your Honor:

As a courtesy to the court, we write to bring to your attention two points in response to the motions filed on April 10, 2012, by the Direct Action Plaintiffs (*DAPs*) and on April 27, 2012, by the State of Florida to serve Beijing Matsushita Color CRT Co., Ltd (*BMCC*) through U.S. counsel (*Foreign Service Motions*). We understand a hearing on the motion is scheduled for May 21, 2012 at 10:00 a.m.

First, as we have informed DAPs and the State of Florida, Freshfields Bruckhaus Deringer US LLP has not been instructed to represent BMCC in the direct action cases or in the actions brought by the state attorney generals. BMCC does not have in-house legal counsel and none of its remaining employees, to our knowledge, is able to read English.

Second, BMCC is a company organized under the laws of the People's Republic of China. It previously manufactured and sold CRTs (i.e., tubes); it never manufactured or sold finished products (i.e., televisions). BMCC has shut down all manufacturing operations and laid off nearly all of its work force. BMCC does not have, and never has had, any subsidiaries or assets in the United States.

Assuming the applicability to the Foreign Service Motions of Judge Conti's ruling (docket #374) on the similar motion by Indirect Purchaser Plaintiffs (*IPP*), the basis for Judge Conti's

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OUR REF CAL

The Freshfields Bruckhaus Deringer US LLP partners include members of the Bars of the State of New York and the District of Columbia, Solicitors of the Supreme Court of England and Wales and Rechtsanwälte of Germany

Abu Dhabi Amsterdam Bahrain Barcelona Beijing Berlin Brussels Cologne Dubai Düsseldorf Frankfurt am Main
Hamburg Hanoi Ho Chi Minh City Hong Kong London Madrid Milan Moscow Munich New York Paris Rome
Shanghai Tokyo Vienna Washington



Freshfields Bruckhaus Deringer US LLP

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ruling does not apply to BMCC as BMCC does not have U.S. subsidiaries, or with respect to the DAP or State of Florida claims, U.S. counsel .

An affidavit is attached in support of this letter.

Sincerely,

Christine Laciak

cc (via email):

Philip Iovieno, Boies, Schiller & Flexner LLP, Liaison Counsel for Direct Action Plaintiffs
David Martinez, Robins, Kaplan, Miller & Ciresi L.L.P., Counsel for Best Buy
Satu Correa, Office of the Attorney General, State of Florida (via email)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

) Case No.: 3:07-CV-5944
) MDL NO. 1917

)
) **DECLARATION OF TERRY CALVANI**
) **REGARDING DIRECT ACTION**
) **PLAINTIFF'S MOTION TO SERVE**
) **DEFENDANT BEIJING MATSUSHITA**
) **COLOR CRT CO., LTD PURSUANT**
) **TO FED. R. CIV. P. 4(f)(3)**

)
) Hearing: May 21, 2012 at 10:00 a.m.

I, Terry Calvani, hereby declare as follows:

1. I am an attorney with the law firm of Freshfields Bruckhaus Deringer US LLP
(*Freshfields*).

2. I am a member in good standing of the State Bar of California and admitted to
practice before the United States District Court for the Northern District of California.

3. I submit this declaration to set forth facts in support of a letter filed concurrently
herewith regarding the motions filed by Direct Action Plaintiffs and the State of Florida to serve
defendant Beijing Matsushita Color CRT Co., Ltd. (**BMCC**) via U.S. counsel.

4. Freshfields has not been instructed by BMCC to represent BMCC in the direct
action or state attorney general cases.

5. Freshfields informed Anne Nardacci at Boies, Schiller & Flexner LLP, liaison
counsel for direct action plaintiffs that Freshfields has not been instructed by BMCC to represent
BMCC in the direct action cases.

6. Freshfields informed Satu Correa of the Attorney General's Office of the State of
Florida that Freshfields has not been instructed by BMCC to represent BMCC in the State of
Florida action.

7. BMCC is a company organized under the laws of the People's Republic of China with its principal and only place of business in Beijing, China.

8. BMCC manufactured Cathode Ray Tubes (“CRTs”), meaning Color Picture Tubes (“CPTs”) and Color Display Tubes (“CDTs”). BMCC never manufactured or sold finished products containing CRTs such as televisions or computer monitors.

9. To the best of my knowledge, BMCC does not have, and never has had, any subsidiaries or assets in the United States.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1 day of May 2012 in Washington, DC.


Terry Calvani